STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1650

Arthur Township,
Respondent,

vs.

Donald Sauve,
Appellant,

Haley Sauve,
Defendant.

Filed September 7, 2021
Affirmed; motion granted
Frisch, Judge

Kanabec County District Court
File No. 33-CV-20-34

Robert A. Alsop, Joshua P. Devaney, Kennedy & Graven Chartered, Minneapolis, Minnesota (for respondent)

Don Sauve, Mora, Minnesota (pro se appellant)

Considered and decided by Bryan, Presiding Judge; Segal, Chief Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant-property-owner appeals from the district court's grant of summary judgment to enforce local zoning ordinances. We affirm and strike certain submissions by appellant as not part of the district court record or lacking record citation.

FACTS

In October 2019, respondent Arthur Township (the township) informed appellant Donald Sauve that he was in violation of township ordinances prohibiting more than one inoperable or unlicensed vehicle or trailer to be parked on residential properties under two acres and prohibiting a property owner from maintaining a "visual appearance" or "other such objectionable influence" that the township deems "to have a negative impact upon property values in the area." *See* Arthur Twp., Minn., Zoning Ordinance (ATZO) § 13, subd. 8, § 14, subd. 5 (2010). The township gave Sauve a deadline to either "provid[e] proof of both operability and licensure for all vehicles parked in [Sauve's] front yard" or remove "all but one" of the vehicles from the property.

In January 2020, the township served Sauve with a summons and complaint alleging that Sauve owned real property "zoned as Rural Residential," where he was "illegal[ly] parking and stor[ing] . . . motor vehicles and boats" in violation of local ordinances. The complaint sought, in pertinent part, injunctions requiring Sauve to bring his property into compliance with township ordinances and prohibiting him from committing similar ordinance violations in the future, along with an order authorizing the township to take steps to correct the ordinance violations in the event Sauve failed to do so. Sauve served,

but failed to file, a one-line answer: "I (we) are in compliance with Arthur Township Subd. 8 on page 66."

On September 1, the township served and filed a motion for summary judgment. The township argued that Sauve was "in violation of at least three of the Township's Ordinances" and that summary judgment was proper because there was no genuine issue of material fact as to whether the ordinance violations existed. The township argued that ATZO § 14, subd. 6 (2010), requires all lots to "be maintained in a neat and orderly manner" and prohibits "rubbish salvage materials, junk or miscellaneous refuse" from being "openly stored or kept in the open when the same is construed by the Town Board to be a menace or nuisance to the public health, safety, or general welfare of the Town, or to have a negative impact upon property values in the area." The township further argued that Section 14, subdivision 5, prohibits "[a]ny visual appearance" or "objectionable influence . . . construed by the Town Board . . . to have a negative impact upon the property values in the area." *See* ATZO § 14, subd. 5. Finally, the township argued that Section 13, subdivision 8, provides, in relevant part, "No more than one vehicle or trailer without current license plates or that is inoperable shall be parked or stored on any platted residential property or properties that are less than two acres in size other than in a completely enclosed building." *See* ATZO § 13, subd. 8.

The township also filed a declaration from its assistant zoning administrator who attested, in pertinent part, that the property consisted of .56 acres and that "[n]otwithstanding multiple notices and warnings of [Sauve's] ongoing violations of the Township Ordinance, [Sauve] ha[s] failed to eradicate or otherwise correct the foregoing

ordinance violation." The declaration incorporated photographs showing multiple vehicles parked on Sauve's front yard near the road.

Sauve did not file a response to the summary-judgment motion. The district court held a motion hearing on October 19, at which the township argued there were no material factual issues in dispute, including the condition of Sauve's property. Sauve attended the hearing, conceded that he had multiple vehicles parked on his property, but argued that he was not in violation of any ordinance because the vehicles consisted of "nice cars" which were "insured, licensed, and fully operational." Sauve also claimed to have submitted documentation demonstrating that the vehicles were insured, but neither the district court nor the township had received any such document at the time of the hearing, and no such document was ever properly filed with the district court. The township countered that, even if the vehicles were properly registered, Sauve was still in violation of at least one ordinance for "parking too many vehicles on the property."

On October 29, the district court granted the township's motion for summary judgment and ordered Sauve to "remove all except one of the unlicensed or inoperable vehicles and trailers that are visible from a public road or adjacent residence, and not in a fully enclosed building, from the Subject Property." The district court further ordered Sauve to provide the township with a description of the "one inoperable or unlicensed vehicle[]" that was to remain on his property, provide proof of current insurance, registration, and tabs of any other vehicles that remained not fully enclosed on the property, and schedule a time for the township "to visit the Subject Property to confirm that any vehicles remaining on the property are fully operational" within 60 days. The district court

also authorized the township to take steps to "eradicate" violations that remained after the 60-day period.

The district court noted in the memorandum attached to its order that Sauve "did not file a response to [the township's] Motion for Summary Judgment" and that "[a]t the hearing, Mr. Sauve claimed to have proof of insuring the vehicles and proof that they are operable, but failed to serve this information on [the township] or file any paperwork with the Court." The district court included the following observation in its memorandum:

> Based on evidence provided in [the township's] affidavit in support of Summary Judgment, many of the vehicles, even if operable, are parked off the driveway in violation of the ordinance. The vehicles as they appear in the photos in [the township's] affidavit are a nuisance as defined in the ordinance. If the vehicles are indeed operable and insured, it should be fairly easy for [Sauve] to cure the violations.

This appeal follows.

DECISION

I. Certain portions of Sauve's briefs and addendum are stricken.

As a preliminary matter, the township moved to strike "all documents from [Sauve's] Addendum except for" the court order being appealed and "all facts and representations contained in [Sauve's] Brief that do not cite to a portion of the record from which the fact or representation is derived." Sauve did not file a timely response to the motion to strike.

The appellate record consists of "[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings." Minn. R. Civ. App. P. 110.01. We are "bound to

the [district] court record" and "may not consider matters not produced and received in evidence below." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). This court will strike evidence presented on appeal that is "not contained in the district court file." *Minn. Cent. R.R. Co. v. MCI Telecomms. Corp.*, 595 N.W.2d 533, 540 (Minn. App. 1999), *rev. denied* (Minn. Sept. 14, 1999). Further, Minn. R. Civ. App. P. 128.03 requires statements contained in a brief to be accompanied by references to the record. *See also Brett v. Watts*, 601 N.W.2d 199, 202 (Minn. App. 1999) ("Failure to cite to the record is a violation of Minn. R. Civ. App. P. 128.03."), *rev. denied* (Minn. Nov. 17, 1999). A "flagrant violation" of a party's obligation to cite to the record "may lead to non-consideration of an issue or dismissal of an appeal." *Id.* (quotation omitted).

Sauve submitted several documents on appeal that were not presented to the district court. Sauve also did not provide citations to the record for any alleged statement of material fact set forth in either of his briefs, and a review of the record demonstrates that the majority, if not all, of the statements contained therein are unsupported by the record. We therefore strike all documents contained in Sauve's addendum not presented to the district court. We further strike Sauve's statement of facts contained in his brief and reply brief in their entirety as not supported by the court record and as a flagrant violation of Minn. R. Civ. App. P. 128.03.

II. The district court properly entered summary judgment.

A district court "shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A material fact is one that will affect the outcome or result

of a case. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). "A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party." *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, 657 (Minn. App. 2017), *rev. denied* (Minn. Sept. 27, 2017). We review a district court's legal conclusions on summary judgment de novo and view the evidence in the light most favorable to the party against whom summary judgment was entered. *Com. Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

A party opposing summary judgment must produce competent, admissible evidence setting forth a genuine issue for trial. *Twin Cities Metro-Certified Dev. Co. v. Stewart Title Guar. Co.*, 868 N.W.2d 713, 720 (Minn. App. 2015). "In order to successfully oppose a summary judgment motion, a party cannot rely upon mere denials or general assertions but must demonstrate that specific facts exist which create a genuine issue for trial." *Johnson v. Van Blaricom*, 480 N.W.2d 138, 140 (Minn. App. 1992).

Three zoning ordinances are relevant in this appeal. First, "No more than one vehicle or trailer without current license plates or that is inoperable shall be parked or stored on any platted residential property . . . less than two acres in size other than in a completely enclosed building." ATZO § 13, subd. 8. Second, the township prohibits "[a]ny visual appearance . . . or other such objectionable influence, or the storage of refuse . . . construed by the Town Board to be a menace or nuisance . . . or to have a negative impact upon property values in the area." ATZO § 14, subd. 5. Third, "All lots within all zoning districts shall be maintained in a neat and orderly manner. No rubbish salvage materials, junk or miscellaneous refuse shall be openly stored or kept in the open when the same is

construed by the Town Board to be a menace or nuisance . . . or to have a negative impact upon property values in the area." *Id.*, subd. 6.

The district court determined that Sauve was in violation of the township's ordinances and granted summary judgment in favor of the township. The district court ordered Sauve to comply with the ordinances by removing all but one "unlicensed or inoperable" vehicle from his property, providing proof of current insurance, registration and tabs of any other vehicles that remained not fully enclosed on the property, and scheduling a time for the township "to visit the Subject Property to confirm that any vehicles remaining on the property are fully operational." Sauve argues that the district court erred because (1) he was not in violation of a township ordinance, (2) insufficient evidence was presented to establish he was in violation of an ordinance, and (3) Sauve "made every reasonable effort to show the township that [he is] in compliance with [the township's] zoning ordinance." The township argues that "[t]he undisputed facts established that there were multiple vehicles on the Subject Property that were either not licensed or were not operational in violation of the Township's Zoning Ordinance."

The district court record included undisputed evidence that Sauve resided on approximately one-half acre of residential real property within the township, on which he had numerous vehicles parked visible from the road and not contained in a fully enclosed building. The township included in its motion papers photographs of the vehicles contained on the property. The assistant zoning administrator attested that "[t]he prohibited conditions consist of multiple inoperable or unlicensed vehicles." Sauve did not file a response to the township's motion. Sauve pointed to no competent evidence to dispute the

material facts as presented by the township, only arguing that he was in compliance with the ordinances because the vehicles on his property were all "insured, licensed, and fully operational." A genuine issue of material fact requires more than "mere denials or general assertions," and Sauve did not submit any evidence to establish any such issue existed for trial which would preclude summary judgment. *Id.*

Sauve's argument, without evidentiary support, that he was not in violation of any township ordinance is insufficient to withstand a motion for summary judgment.[1] As the district court noted, its order merely requires Sauve to cooperate with the township and comply with its ordinances, and "[i]f the vehicles are indeed operable and insured," as alleged by Sauve, "it should be fairly easy for [Sauve] to cure the violations."

Affirmed; motion granted.

[1] Sauve hints at other issues which he either failed to raise in district court or raised for the first time in his reply brief. We deem these potential arguments forfeited. *See Minn. Sands, LLC v. County of Winona*, 940 N.W.2d 183, 199 n.15 (Minn. 2020); *Thiele*, 425 N.W.2d at 582.